



U.S. Department of Justice

Civil Division, Federal Programs Branch
20 Massachusetts Ave, N.W.
P.O. Box 883 Ben Franklin Station
Washington, D.C. 20530

Kathryn L. Wyer
Trial Attorney

Tel: (202) 616-8475
Fax: (202) 616-8470

BY E-MAIL

February 8, 2013

Lorraine Baumgardner
55 Public Sq., Ste. 2200
Cleveland OH 44113
lbaumgardner@bgmdlaw.com

Re: Free Speech Coalition v. Holder, No. 2:09-cv-4607

Dear Lorraine,

You have asked about the availability of SSA Lawrence and SSA Joyner for depositions, and the locations of these depositions. In regard to location, SSA Lawrence is in Los Angeles, California, and SSA Joyner, is in Houston, Texas. Since there are U.S. Attorney's Offices in both these locations, I expect we can arrange for the depositions to take place there once we figure out the dates, if that is acceptable to you. The FBI is still in the process of contacting SSA Joyner, who is retired, and I will let you know about the SSAs' availability when I hear from the FBI. In addition, before we discuss specific dates for those depositions, I would like to address the deposition schedule more generally. We will want to conduct depositions of the following plaintiffs, plaintiff representatives, and witnesses that you have identified:

Barbara Alper
Michael Barone
Betty Dodson
Carlin Ross
Thomas Hymes
Marie Levine
David Levingston
Barbara Nitke
Carol Queen
David Steinberg
Joy King
Julie Russell
Jeffrey Douglas
Diane Duke
Victor Perlman

A representative of Free Speech Coalition with knowledge regarding FSC's membership; FSC members' production of material containing visual depictions of sexually-explicit conduct; FSC

members' compliance with the requirements of 18 U.S.C. §§ 2257 and 2257A and their implementing regulations; and other matters referenced in FSC's responses to Defendant's discovery requests

A representative of American Society of Media Photographers with knowledge regarding ASMP's membership; ASMP members' production of material containing visual depictions of sexually-explicit conduct; ASMP members' compliance with the requirements of 18 U.S.C. §§ 2257 and 2257A and their implementing regulations; and other matters referenced in ASMP's responses to Defendant's discovery requests

We will also want to conduct depositions of representatives of each of the following, which plaintiff FSC has alleged is an FSC member on whose behalf it is asserting a Fourth Amendment challenge, with knowledge regarding the entity's membership in FSC; its compliance with the requirements of 18 U.S.C. §§ 2257 and 2257A and their implementing regulations; and any inspection conducted by the FBI of its records maintained under § 2257:

Diabolic Video
Darkside Productions, Inc.
K-Beech Video, Inc.
Wicked Pictures
Filmco/Bacchus
Pure Play Media
Sunshine Films
Robert Hill Releasing
Legend Video
Shane's World
V-9 Video
Gentlemen's Video, Inc.
Moonlight Entertainment

You have not specifically identified any additional FSC or ASMP members that you intend to call as a witness. We would like to depose any such individuals as well. In particular, please let me know whether you intend to call David Conners as a fact witness.

With respect to the nonplaintiff entities listed above, please let me know if you will be able to coordinate with them in order to schedule their depositions. With respect to the depositions of plaintiffs, I ask that you let me know any dates where plaintiffs and plaintiffs' counsel are NOT available, and the locations where you propose these depositions take place. However, we also need to resolve the outstanding discovery disputes and receive the additional material that we are seeking before deposing the plaintiffs. I also must point out that, because of the religious holidays during the week of March 25, we will not be available for depositions during that week. I am therefore concerned regarding the current March 29, 2013, discovery deadline. I wondered what plaintiffs' view is regarding seeking an extension of that deadline from the Court.

Sincerely,
/s/
Kathryn L. Wyer



U.S. Department of Justice

Civil Division, Federal Programs Branch
20 Massachusetts Ave, N.W.
P.O. Box 883 Ben Franklin Station
Washington, D.C. 20530

Kathryn L. Wyer
Trial Attorney

Tel: (202) 616-8475
Fax: (202) 616-8470

BY E-MAIL

February 20, 2013

Lorraine Baumgardner
55 Public Sq., Ste. 2200
Cleveland OH 44113
lbaumgardner@bgmdlaw.com

Re: *Free Speech Coalition v. Holder*, No. 2:09-cv-4607

Dear Lorraine,

I am writing in response to your inquiry regarding the availability of SSAs Lawrence and Joyner for depositions, and to follow up on my letter of February 8, 2013, in which I asked Plaintiffs to advise regarding the availability for deposition of certain individuals.

Regarding SSA Lawrence, I would like to propose Tuesday, March 5, in Los Angeles. I have a hearing in another case in Los Angeles on March 4, so I would like to combine the travel, if possible. Please let me know if that works for you.

Regarding SSA Joyner, I would like to propose any day between March 12 and March 15, in Houston. As I mentioned previously, I will attempt to reserve a conference room in the local U.S. Attorney's Offices for both of these once we decide on the dates.

Please respond to my letter of February 8, 2013, regarding the availability of the individuals that we would like to depose. You have also provided a list of names of individuals on the Boards of Directors of Free Speech Coalition and American Society of Media Photographers. Please provide the addresses of these individuals.

As I have mentioned a couple times already, due to the discovery delays that have already occurred and the impossibility of completing depositions before the current March 29, 2013, deadline, Defendant plans to seek an extension of that deadline. I expect we will raise this issue at the next conference call with the Court. Please let me know Plaintiffs' position.

Sincerely,
/s/
Kathryn L. Wyer

From: [Lorraine Baumgardner](#)
To: [Wyer, Kathryn \(CIV\)](#)
Cc: [Bladuell, Hector \(CIV\)](#); [J. Michael Murray](#)
Subject: Free Speech Coalition v. Holder
Date: Thursday, February 21, 2013 2:43:47 PM

Kathy,

Thank you for providing dates for the depositions of Agents Joyner and Lawrence. Unfortunately, the dates you propose won't work. Mike, who will be taking the depositions, has a trial that begins on March 5 and is expected to last two weeks. He is available on March 20, 21, and 22, however. If for some reason, we learn that the trial will not be going forward, we will let you know and see if we can schedule the depositions on the dates that you propose. Otherwise, let me know which, if any, of those three dates work for you.

During our phone conference last week, the judge directed you to take the depositions of two of the Plaintiffs. Please identify which two of the Plaintiffs you would like to depose and I will inquire about their availability.

I will be sending redacted 2257 records and model releases for Free Speech Coalition Member Vivid Video as email attachments later on today and will be sending a portion of redacted records for Plaintiff Carol Queen via Federal Express for delivery to you tomorrow.

Best,

Lorraine R. Baumgardner
Berkman, Gordon, Murray & DeVan
55 Public Square Ste. 2200
Cleveland, Ohio 44113
(216) 781-5245
www.bgmdlaw.com

From: Wyer, Kathryn (CIV)
To: ["Lorraine Baumgardner"](#)
Cc: [Bladuell, Hector \(CIV\)](#); [J. Michael Murray](#)
Subject: RE: Free Speech Coalition v. Holder
Date: Friday, February 22, 2013 3:29:00 PM

Lorraine,

Unfortunately, March 20-22 do not work for us. I have a hearing in another case scheduled on March 21, as well as travel plans (I am already attempting to move one or the other of those and would not be able to move both). It appears that we have no mutually available dates before the current discovery deadline of March 29. I would ask that you respond to my letter of February 8 indicating any periods of unavailability of the individuals we listed, and of counsel, for the period starting April 8, so that we can get a sense of how long an extension of the deadline we will need. Both Hector and I recall that Judge Baylson had proposed that we begin by deposing two of the FSC or ASMP Board members. That was why I had asked that you provide the addresses of the Board members that you previously identified.

Best,
Kathy

Kathryn L. Wyer
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
Delivery: 20 Massachusetts Ave., NW, Room 7124
Washington, DC 20530
Mail: P.O. Box 883, Washington, DC 20044
Tel. 202 616-8475
Fax 202-616-8470
kathryn.wyer@usdoj.gov

*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***

This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information and/or attorney work product. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5).

From: Lorraine Baumgardner [<mailto:lbaumgardner@bgmdlaw.com>]
Sent: Thursday, February 21, 2013 2:44 PM
To: Wyer, Kathryn (CIV)
Cc: Bladuell, Hector (CIV); J. Michael Murray
Subject: Free Speech Coalition v. Holder

Kathy,

Thank you for providing dates for the depositions of Agents Joyner and Lawrence. Unfortunately, the dates you propose won't work. Mike, who will be taking the depositions, has a trial that begins on March 5 and is expected to last two weeks. He is available on March 20, 21, and 22, however. If for some reason, we learn that the trial will



U.S. Department of Justice

Civil Division, Federal Programs Branch
20 Massachusetts Ave, N.W.
P.O. Box 883 Ben Franklin Station
Washington, D.C. 20530

Kathryn L. Wyer
Trial Attorney

Tel: (202) 616-8475
Fax: (202) 616-8470

BY E-MAIL

February 27, 2013

Lorraine Baumgardner
55 Public Sq., Ste. 2200
Cleveland OH 44113
lbaumgardner@bgmdlaw.com

Re: Free Speech Coalition v. Holder, No. 2:09-cv-4607

Dear Lorraine,

I am writing once again in regard to the deposition schedule. As I previously explained, Defendant will need to depose all 10 individual plaintiffs, as well as representatives of the two organizational plaintiffs, given that they are each raising a separate as-applied First Amendment challenge. We will also need to depose representatives of the entities who have had 2257 records inspections, and on behalf of whom Free Speech Coalition purports to be asserting its Fourth Amendment claim. You have also identified certain individuals as fact witnesses. As you know, I requested by letter dated February 8, 2013, that you indicate the availability of the 10 individual plaintiffs, the potential witnesses that you have identified, and representatives of Free Speech Coalition and American Society of Media Photographers who could address certain issues. I also asked whether you would be able to arrange the depositions with agents of the entities on whose behalf FSC purports to be asserting its Fourth Amendment claim. I have not yet received any response to these requests.

In addition, in the telephone conference on February 15, Judge Baylson indicated that FSC and ASMP should identify the names of their Board members so that Defendant would have the opportunity to depose them as a potential substitute for obtaining FSC and ASMP member lists and attempting to review materials relating to over 2000 FSC and ASMP members. I have received your lists of Board members, but I have asked that you provide their addresses so that we could determine which among them might be most convenient to depose. So far I have not received that information.

In response to your inquiry about the availability of SSAs Lawrence and Joyner, I indicated that SSA Lawrence could be available on March 5, and SSA Joyner could be available any time between March 12 and 15, but you have indicated that Plaintiffs' counsel is not available any time before March 20. I have also indicated to you that Defendant's counsel is not available between March 21 and the current discovery deadline of March 29, primarily due to religious holidays as well as a hearing in another case.

In an effort to make progress, I note that SSA Lawrence would be available on March 19. I realize you have indicated Michael Murray would still be in trial on that date, but if you think that would work for you, please let me know. Please also indicate the availability of the following: (1) Barbara Alper; (2) A representative of Free Speech Coalition with knowledge regarding FSC's membership; FSC members' production of material containing visual depictions of sexually-explicit conduct; FSC members' compliance with the requirements of 18 U.S.C. §§ 2257 and 2257A and their implementing regulations; the inspections conducted of FSC members' 2257 records; and other matters referenced in FSC's responses to Defendant's discovery requests; (3) A representative of American Society of Media Photographers with knowledge regarding ASMP's membership; ASMP members' production of material containing visual depictions of sexually-explicit conduct; ASMP members' compliance with the requirements of 18 U.S.C. §§ 2257 and 2257A and their implementing regulations; and other matters referenced in ASMP's responses to Defendant's discovery requests. While we will still need to depose the other individuals mentioned above, we would like to begin with these three.

You have previously suggested that, in addition to the individuals identified by name in your list of fact witnesses, Plaintiffs might call as a witness any FSC or ASMP members as well as any individual identified in the FBI inspection reports. I ask that you identify any such individuals by name now so that we can know with certainty the complete list of individuals we may need to depose.

You have indicated that you would like to contact the Court to clarify its previous statements regarding depositions. We would also like to contact the Court regarding the current discovery deadline. We are available any time the rest of this week, so just let me know when you would like to make the call.

Sincerely,
/s/
Kathryn L. Wyer